

m/043/012

WRIGHT/GARFF RESOURCES, L.L.C.

1675 Beck Street
Salt Lake City, Utah 84116
(801) 983-8000

February 10, 2006

Lynn Kunzler
Division of Oil, Gas and Mining
P O Box 145801
Salt Lake City, Utah 84114-5801

Re: American Stone Renewal Application-Lot 38, Browns Canyon, Summit Cnty, Utah

Dear Mr. Kunzler:

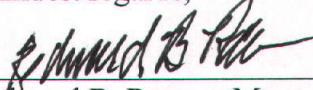
It has come to my attention that Lon Thomas of American Stone has requested a renewal of his mining permit on Lot 38 with the only modification being a reduction of .72 acres reflecting the changing of the fence line over to the property line. Wright/Garff Resources strongly objects to this application being approved for the following reasons:

1. Wright/Garff owns all of the subsurface of Lot 38 and all of the mineral interests pertaining thereto except that portion belonging to the BLM.
2. The Wright/Garff lease with American Stone, et al, ended 10/31/05 and has not been nor will it be renewed. Although, under your Department rules, you cannot ask if the mining applicant has permission of the mineral owner to operate a mine, this notice to you that American Stone has been denied access to the mine should preclude the granting of a renewal permit.
3. Wright/Garff is in process of obtaining another miner and does not want to deal with Mr. Thomas claiming he already has a permit and therefore another cannot be issued.

With a lease from the BLM American Stone could certainly mine the dolomite on the BLM mineral interest portion of Lot 38 if a permit is granted for that but such a permit must be restricted to that area. Enclosed is a copy of the Court determination that American Stone only owns the surface of Lot 38 and the description of what that "surface" includes.

Your favorable consideration of this request is appreciated.

Kindest regards,



Edward B. Rogers, Manager

RECEIVED

FEB 13 2006

DIV. OF OIL, GAS & MINING

No. FILED

JAN 13 1997

By Third District Court
Deputy Clerk, Summit County

Robert P. Hill (1492)
John A. Adams (0023)
RAY, QUINNEY & NEBEKER
Attorneys for Plaintiff
79 South Main Street, Suite 400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, UTAH

---ooOoo---

WRIGHT/GARFF RESOURCES, L.L.C.,
a Utah limited liability company,

Plaintiff,

v.

THOMAS AMERICAN STONE AND
BUILDING, INC., a Utah corporation,
dba AMERICAN STONE COMPANY,
LON A. THOMAS, an individual, and
UNKNOWN PERSONS designated as
JOHN DOE NO. 1 through 10,

Defendants.

ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT

Civil No. 94-03-00111

---ooOoo---

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On October 28, 1996, at 4:30 p.m., Plaintiff's Motion for Partial Summary Judgment regarding ownership of a building stone deposit in Summit County, Utah came on for hearing before the Honorable Pat Brian with Robert P. Hill and John A. Adams of Ray, Quinney & Nebeker appearing on behalf of Plaintiff Wright/Garff Resources, L.L.C. ("Wright/Garff") and Russell C. Fericks and Mark L. McCarty of Richards, Brandt, Miller & Nelson

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appearing on behalf of Defendants Thomas American Stone and Building, Inc. ("American Stone"), Lon A. Thomas and Beverly Thomas.

Based upon the memoranda and affidavits submitted by Wright/Garff, the argument of counsel and good cause therefor appearing, the Court enters its Findings of Fact, Conclusions of Law and Order as follows:

FINDINGS OF FACT

A. This action involves conflicting claims to ownership of building stone deposits in and under a parcel of real property located in Summit County, Utah, more particularly described as follows ("Lot 38"):

BEGINNING at a point that is due North 2723.833 feet and due East 1304.828 feet from the Southeast corner of Section 19, Township 1 South, Range 5 East Salt Lake Base & Meridian, (said Southeast corner bearing North 89° 23' 18" East from Southwest corner and being the basis of bearing for this description); thence North 58°30'12" East 1244.381 feet; thence South 34° East 847.614 feet to a point on the South line of the Northeast 1/4 of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 89°38'12" West along said South line 208.53 feet to the center of section of said Section 20; thence South 0°12'28" East along the West line of the Southeast 1/4 of said Section 20 1326.604 feet to the Southwest corner of the North 1/2 of Southeast 1/4 of said Section 20; thence North 89°38'12" East along the South line of said North 1/2 of Southeast 1/4 65.907 feet to a point on the arc of a 2914.790 foot radius curve, the center of which bears South 19°33'40" East; thence Southwesterly along the arc of said curve to the left through a central angle of 11°35'20", a distance of 589.554 feet; thence North 27°55'59" West 1847.338 feet to the point of BEGINNING.

B. By Warranty Deed dated April 3, 1978 and recorded April 5, 1979 at Book M130, page 682, in the records of the Summit County Recorder (the "Tracy Deed"), Tracy Land and Livestock Company conveyed Lot 38 and other lands in Summit and Wasatch Counties to Utah Title and Abstract Company, as trustee ("Utah Title"):

C. The Tracy Deed included the following express reservation:

EXPRESSLY EXCEPTING AND RESERVING, HOWEVER TO GRANTOR, an undivided one-half (1/2) interest in and to all coal, oil, gas and all other metallic and non-metallic minerals, of every kind or character, whether similar or dissimilar to said named minerals, and whether now known or hereafter discovered, including, but without limitation, all building stone, sand, gravel and geothermal rights, now owned by Grantor, whether mined or extracted by surface or underground mining or extraction methods, in, upon or underlying all of said real property, together with the full right of ingress and egress, to prospect for, mine and remove the same.

D. By Special Warranty Deed dated April 1, 1979 and recorded April 19, 1979 at Book M131, page 634, in the records of the Summit County Recorder (the "Utah Title Deed"), Utah Title, as trustee, conveyed the "surface rights only" in Lot 38 to Dee Henshaw.

E. The building stone underlying Lot 38 is not on the surface or immediately below to the surface.

F. The building stone underlying Lot 38 is different in character from, and has a value separate from, the soil itself and vegetation growing on the surface.

G. American Stone has been operating a building stone quarry on Lot 38, and has been mining and removing building stone from Lot 38.

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H. American Stone's quarrying operations on Lot 38 have penetrated beneath the surface of the land.

CONCLUSIONS OF LAW

1. The undivided mineral interest in Lot 38 which was reserved to Tracy Land and Livestock Company in the Tracy Deed has passed from Tracy Land and Livestock Company to Wright/Garff (36.761111%) and to others (13.238889%) by mesne conveyances.

2. The subsurface rights and interests in and under Lot 38, which were retained by Utah Title, as trustee, in the Utah Title Deed, have passed from Utah Title, as trustee, to Wright/Garff by mesne conveyances.

3. The surface rights in the Subject Lands, which were originally conveyed by Utah Title, as trustee, to Dee Henshaw in the Utah Title Deed, have passed from Mr. Henshaw to American Stone by mesne conveyances.

4. The mineral reservation in Tracy Deed and the limited grant of surface rights only in Utah Title Deed are clear and unambiguous.

5. Under the plain language of the Tracy Deed, one-half of all building stone and other minerals, whether mined by surface or underground mining methods, was reserved to the grantor, together with the right of ingress and egress to explore and mine for and remove the same.

6. Under the plain language of the Utah Title Deed, only surface rights in Lot 38 were conveyed to Dee Henshaw. All mineral and subsurface interests not previously excepted or reserved were retained by Utah Title, as trustee.

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7. The "surface rights" on Lot 38 include the surface soil and other materials lying on the immediate natural surface of the land, vegetation growing on the surface and the right to construct structures on the surface and to use the surface for surface uses, such as farming, ranching, residential, commercial, industrial and recreational purposes, together with the right to penetrate the surface incidentally to the exercise of surface rights (e.g., for foundations, footings, basements, water lines or sewer lines).

8. American Stone is the owner of the surface rights in Lot 38.

9. The building stone lying in and under Lot 38 is a mineral.

10. Wright/Garff is the owner of an undivided 86.761111% interest in and to all building stone and other minerals in and under Lot 38, together with the right of ingress, egress and reasonable surface use to mine for and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods.

ORDER

IT IS HEREBY ORDERED that title to an undivided 86.761111% interest in and to all building stone and other minerals in and under Lot 38, together with the right of ingress, egress and reasonable surface use to prospect for, mine and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods, be and hereby is quieted in Wright/Garff.

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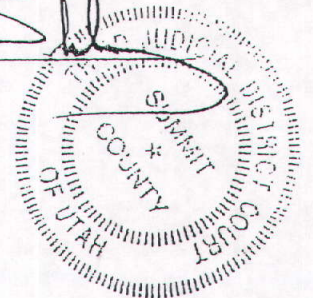
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January, 1997
DATED this 13 day of ~~November~~, 1996.

BY THE COURT

Pat Brian

Pat Brian
District Court Judge



APPROVED AS TO FORM:
RICHARDS, BRANDT, MILLER & NELSON

Russell C. Fericks

Russell C. Fericks

Mark L. McCarty

Attorneys for Defendants Thomas

American Stone and Building, Inc.,

Lon A. Thomas and Beverly Thomas

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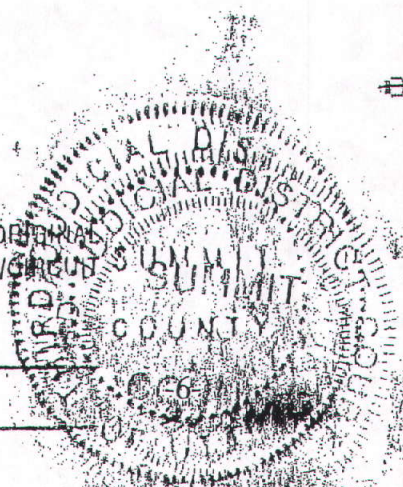
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I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL
DOCUMENT ON FILE IN THE THIRD DISTRICT COURT,
SUMMIT COUNTY, STATE OF UTAH.

DATE: Feb. 21, 1997

Joye D. Ovard
DEPUTY COUNTY CLERK



BOOK W W PAGE 775

Robert P. Hill (1492)
John A. Adams (0023)
RAY, QUINNEY & NEBEKER
Attorneys for Plaintiff
79 South Main Street, Suite 400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

No. _____

FILED

JAN 13 1997

15:24

Third District Court

Deputy Clerk, Summit County

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, UTAH

---ooOoo---

WRIGHT/GARFF RESOURCES, L.L.C., :
a Utah limited liability company, :

Plaintiff, :

v. :

THOMAS AMERICAN STONE AND :
BUILDING, INC., a Utah corporation, dba :
AMERICAN STONE COMPANY, LON A. :
THOMAS, an individual, and UNKNOWN :
PERSONS designated as JOHN DOE NO. 1 :
through 10, :

Defendants. :

JUDGMENT QUIETING TITLE AND
DISMISSING OTHER CLAIMS WITH
PREJUDICE

Civil No. 94-03-00111

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---ooOoo---

Pursuant to the Court's Order Granting Motion for Partial Summary Judgment and good
cause therefor appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Findings of Fact and Conclusions of Law more fully set out in the Court's
Order Granting Motion for Partial Summary Judgment in this matter are hereby incorporated in
this Judgment by reference; and

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2. That title is hereby quieted in Wright/Garff Resources, L.L.C., a Utah limited liability company, in and to an undivided 86.761111% interest in and to ⁽²⁾all building stone and ⁽³⁾other minerals and 100% of all other subsurface materials and rights in and under the following described real property in Summit County, Utah, together with the right of ingress, egress and reasonable surface use to prospect for, mine and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods:

BEGINNING at a point that is due North 2723.833 feet and due East 1304.828 feet from the Southeast corner of Section 19, Township 1 South, Range 5 East Salt Lake Base & Meridian, (said Southeast corner bearing North 89° 23' 18" East from Southwest corner and being the basis of bearing for this description); thence North 58°30'12" East 1244.381 feet; thence South 34° East 847.614 feet to a point on the South line of the Northeast 1/4 of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 89°38'12" West along said South line 208.53 feet to the center of section of said Section 20; thence South 0°12'28" East along the West line of the Southeast 1/4 of said Section 20 1326.604 feet to the Southwest corner of the North 1/2 of Southeast 1/4 of said Section 20; thence North 89°38'12" East along the South line of said North 1/2 of Southeast 1/4 65.907 feet to a point on the arc of a 2914.790 foot radius curve, the center of which bears South 19°33'40" East; thence Southwesterly along the arc of said curve to the left through a central angle of 11°35'20", a distance of 589.554 feet; thence North 27°55'59" West 1847.338 feet to the point of BEGINNING. (Also sometimes referred to as "Lot 38".)

Pursuant to the Court's Order Distributing Trust Account, Dissolving Preliminary Injunction and Dismissing Other Claims with Prejudice and good cause therefor appearing, IT IS HEREBY FURTHER ORDERED that all other claims stated in the Amended Complaint and that all claims stated in the Counterclaim be, and hereby are, dismissed with prejudice and on

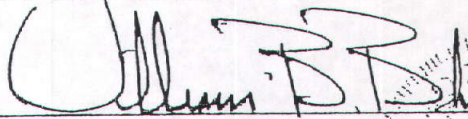
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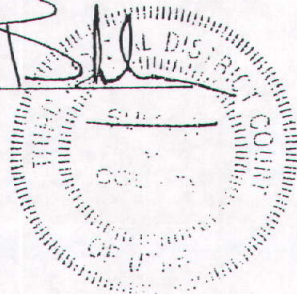
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the merits, with each party bearing its own costs and attorneys' fees.

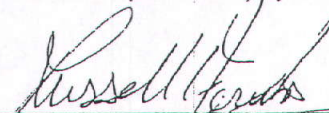
DATED this 13 day of ^{January} ~~November~~, 1996.

BY THE COURT


Pat Brian
District Court Judge



APPROVED AS TO FORM:
RICHARDS, BRANDT, MILLER & NELSON


Russell C. Fericks
Mark L. McCarty
Attorneys for Defendants Thomas
American Stone and Building, Inc.,
Lon A. Thomas and Beverly Thomas

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I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL
DOCUMENT ON FILE IN THE THIRD DISTRICT JUDICIAL
COURT, SUMMIT COUNTY, STATE OF UTAH.

DATE: Feb. 21, 1997


JOYCE D. ORARD
DEPUTY COUNTY CLERK

BOOK W IN PAGE 781

Robert P. Hill (1492)
John A. Adams (0023)
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Attorneys for Plaintiff
79 South Main Street, Suite 400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

No. _____

FILED

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By _____
Deputy Clerk, Summit County

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, UTAH

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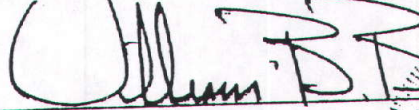
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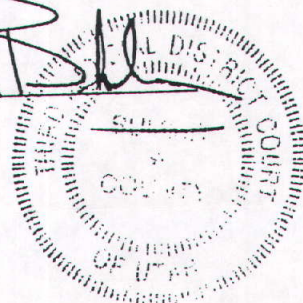
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DATED this 13 day of ^{January} November, 1996.

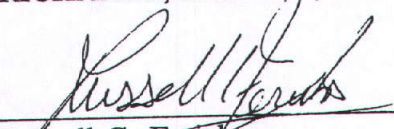
BY THE COURT



Pat Brian
District Court Judge



APPROVED AS TO FORM:
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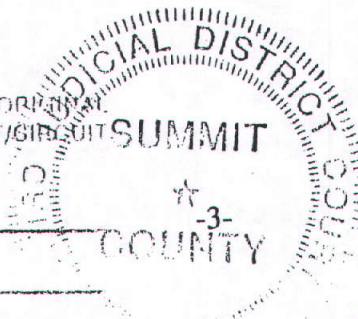
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COURT, SUMMIT COUNTY, STATE OF UTAH.

DATE: Feb. 21, 1997



JOYCE D. ORARD, CLERK

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